LIBRARY
SUPREME COURT, U. S.

No.

IN THE

Supreme Court of the United States

October Term, 1971

CONSOLIDATION COAL COMPANY, UNITED STATES STEEL CORPORATION, YOUNGSTOWN MINES CORP., EASTERN ASSOCIATED COAL CORP., STERLING SMOKELESS COAL COMPANY, OLGA COAL COMPANY, and RANGER FUEL CORPORATION,

Petitioners,

v.

DISABLED MINERS OF SOUTHERN WEST VIRGINIA, and unincorporated association, ELMER BROWN, FRED COGAR, ROMA COOK, BERNARD "RED" COX, LEVI DANIEL, JIMMY ELLIS, LEON FOLEY, JOHN GUZEK, JAMES KIDD, JOHN MENDEZ, GEORGE MOUNTS, ROBERT PAYNE, CLIFFORD RATLIFF, HERBERT J. ROGERS, JAMES S. ROGERS, STANLEY RYNKEIVICH, ROBERT SHORES, JAMES TURNSTALLE, DAVID WHITLACK, JACK WILLIAMS and DONALD YOHO,

Respondents.

BRIEF IN OPPOSITION TO THE PETITION FOR A WRIT OF CERTIORARI TO THE UNTED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT ON BEHALF OF RESPONDENTS IN CIVIL APPEAL NO. 15,402

KENNETH J. YABLONSKI
505 Washington Trust Building
Washington, Pennsylvania 15301

Of Counsel
RICHARD M. BANK
12 Capitol Street
Charleston, West Virginia 25301
GAIL FALK
1026 Quarrier Street
Charleston, West Virginia 25301

TABLE OF CONTENTS

	Page
Counterstatement of The Case	1
Introduction	1
The Facts	2
Reasons Why the Writ Should Not Be Granted	6
I. The decision of the Court of Appeals is harmonious with prior applicable decisions of this Court which have held that an injunction, particularly one which is issued on less than a full record and which endangers First Amendment freedoms, must be narrowly tailored to restrain no more than the actual unlawful conduct revealed in the record and described in the findings of fact	6
A. The Findings of Fact in this case fail to disclose any specific conduct, other than picketing, which was instrumental in or effective to accomplish a shutdown of the mines	6
B. The decision of the Court of Appeals to modify the injunction granted by the District Court is consistent with rulings of this Court which require that any restraint which may infringe upon protected areas of expression must be worded with the utmost precision and delicacy	8
C. No case cited by the Petitioners is inconsistent with the decision of the Court of Appeals in this case	10
Conclusion	15
Appendix	
(Excerpt from Brief of the Appellants filed in the Fourth Circuit Court of Appeals)	A-1

TABLE OF AUTHORITIES

CASES

	Page
Adderly v. *Florida*, 385 U. S. 39	10, 15
Bantam Books, Inc. v. *Sullivan*, 372 U. S. 58 (1963)	9
Carroll v. *President and Commissioners of Princess Anne*, 393 U. S. 175 (1968)	8, 9, 14
Douds v. *Local 1250*, Retail Wholesale Department Store Union of America, 170 F. 2d 700 (2d Cir. 1948)	13, 14, 15
Giboney v. *Empire Storage & Ice Co.*, 336 U. S. 490 (1949); decision below *sub nom. Empire Storage & Ice Co.* v. *Giboney*, 210 S. W. 2d 55 (Mo. 1948)	11, 12, 13, 15
Intl. Brotherhood of Teamsters, Local 695 v. *Vogt, Inc.*, 354 U. S. 284 (1957)	11
Konigsberg v. *State Bar of California*, 366 U. S. 36 (1961)	10, 15
Near v. *Minnesota*, 283 U. S. 697 (1931)	9
Organization for a Better Austin v. *Keefe*, 402 U. S. 415 (1971)	9
Schenck v. *United States*, 249 U. S. 47 (1919)	10, 15
Smith v. *California*, 361 U. S. 147 (1959)	8
United States v. *Robel*, 389 U. S. 258 (1967)	8, 14
Walker v. *City of Birmingham*, 388 U. S. 307 (1967)	9, 14
Winters v. *New York*, 333 U. S. 507 (1948)	8

No.

IN THE

Supreme Court of the United States

October Term, 1971

CONSOLIDATION COAL COMPANY, UNITED STATES STEEL CORPORATION, YOUNGSTOWN MINES CORP., EASTERN ASSOCIATED COAL CORP., STERLING SMOKELESS COAL COMPANY, OLGA COAL COMPANY, and RANGER FUEL CORPORATION,

Petitioners,

v.

DISABLED MINERS OF SOUTHERN WEST VIRGINIA, and unincorporated association, ELMER BROWN, FRED COGAR, ROMA COOK, BERNARD "RED" COX, LEVI DANIEL, JIMMY ELLIS, LEON FOLEY, JOHN GUZEK, JAMES KIDD, JOHN MENDEZ, GEORGE MOUNTS, ROBERT PAYNE, CLIFFORD RATLIFF, HERBERT J. ROGERS, JAMES S. ROGERS, STANLEY RYNKEIVICH, ROBERT SHORES, JAMES TURNSTALLE, DAVID WHITLACK, JACK WILLIAMS and DONALD YOHO,

Respondents.

BRIEF IN OPPOSITION TO THE PETITION FOR A WRIT OF CERTIORARI TO THE UNTED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT ON BEHALF OF RESPONDENTS IN CIVIL APPEAL NO. 15,402

COUNTERSTATEMENT OF THE CASE

INTRODUCTION

Respondents believe some portions of the statement of the case by the Petitioners to be inaccurate and incomplete, and therefore misleading. To the extent

necessary to counteract these deficiencies, the Respondents offer a counterstatement of the case.[1]

THE FACTS

The Petitioners operate coal mines in southern West Virginia (Jt. App. p. 260 A.).

The Respondents are, for the most part, disabled coal miners who, as a result of yearly toil in the mines, have suffered such impairment to their health that they cannot work and care for their families' needs. (D/59, 97, 154, 156, 323; T/591-593; D/56, 57, 98, 137, 314, 323, 154-156, 274, 259).

Throughout their working lives these men have been members of the United Mine Workers of America (D/57, 281; T/1136-37, 1145-49). When they worked, they counted upon the security of pension and health benefits from the United Mine Workers of America Welfare and Retirement Fund to provide for the basic needs of themselves and their families in case they became disabled.

The Fund is financed entirely by a royalty of forty cents per ton of coal mined by miners employed by

---

1. The majority of the references in this counterstatement will be directly to the record. On the appeal to the Fourth Circuit Court of Appeals there was a joint appendix. However, most of the material therein was evidence considered important by the Petitioners. The respondents herein, mostly disabled miners, had and have extremely limited finances. Therefore, they could afford to have only basic pleadings and papers reprinted.

Thus, for the purpose of this brief, where reference is not to the Petitioners' or Respondents' appendices in the present proceedings, the following abbreviations will be used to designate the part of the record referred to:

a/ The joint appendix filed in the appeal to the Fourth Circuit.

D/ Depositions of Respondents, Payne, Brown, Cook, Cox, Steward and Ellis, taken on July 14, 1970, and subsequently made a part of the record.

T/ The four volumes of testimony transcribed by the District Court Reporter between July 15 and July 31, 1970, and filed as part of the record.

each signatory coal operator. (Plaintiffs' Exhibit 19, see pages 80-82 of said Exhibit). Petitioners were signatories to the agreement creating the Fund at the time of the incidents which gave rise to this case.

The Fund is operated and adminstered by a three-member Board of Trustees, which makes the rules and sets the policies by which pensions are granted or denied. One of the three Trustees is the legal representative of the Petitioners and other signatory coal mine operators (Plaintiffs' Exhibit 19, see page 5, 80-81 of said Exhibit).

When the Respondents became disabled, each was denied health and/or pension benefits under the Fund's current rules and regulations. (D/57, 58, 219; T/687; D/56, 281; T/1136-37, 1145-49).

To remedy their plight, and that of other disabled miners and widows, Respondent Payne and six other disabled miners designated themselves The Disabled Miners of Southern West Virginia (hereinafter Disabled Miners) and began to hold public rallies in and around southern West Virginia. At these rallies general discussions concerning the grievances of disabled miners occurred and various solutions were posed. (D/14, 15, 28, 31, 33, 60, 78, 79, 63, 68, 137, 138, 219, 220, 237, 344, 345). During the period in which these rallies and speeches were held, not a single mine was shut down because of the refusal of miners to work in support of the disabled miners and their dependents.

However, starting on June 20 and extending through June 24, 1970, many disabled miners, their dependents and some active miners picketed coal mines in southern

West Virginia. The picketing prompted a strike of active miners which brought production to a halt. (441a; 458a; 459a; 493a; 509a; 536a-37a; 558a; 578a; 606a; 633a; 653a; 669a; 735a; 741a; 743a; 776a). The purpose of the strike was to motivate the union and the companies to influence their representatives on the Board of Trustees of the Welfare and Retirement Fund to exercise their discretion to liberalize its policies regarding distribution of benefits. (D/78, 219, 220, 237, 343, 344).

As soon as the pickets withdrew, the active miners returned to work and production resumed. (693a-695a).

With the withdrawal of the pickets, the Disabled Miners made attempts to initiate negotiations with the Board of Trustees. All were rebuffed. (T/1112-13; 1110-1118, 1136-1137; D/351-53, 342-43).

As a result, on July 12, 1970, the Disabled Miners and others began to resume picketing. Mines which were picketed shut down because active miners refused to work. In a matter of days pickets closed down mines all over West Virginia, and in some sections of Kentucky and Virginia. No mines closed down without the presence of pickets. (D/34, 37, 38, 41, 137, 138, 307, 310; T/1165-1167).

As set forth in the Petitioners' statement of the case, "when a resumption of picketing became imminent," Petitioners commenced actions seeking injunctive relief; in the days and weeks following, temporary restraining orders were issued and hearings held.

On September 8, 1970, the Southern District Court issued its Opinion, Findings, and Conclusions. (Peti-

tioners' App. B p. 21 a.). Its findings were general, and lacked detail; the Court mentioned only one overt act utilized to close down the mines: namely, picketing. (Petitioners' App. B p. 30 a.).

The injunction issued by the Court, however, restrained Respondents and others from "[p]icketing or *in any other manner interferring with*" operations at Petitioners' mines and from "[c]oercing *or otherwise inducing*" employees of Petitioners to withhold their services. (Petitioners' App. C p. 38a). (emphasis added).

On September 24, 1970, Respondents filed Notice of Appeal. On appeal, the United States Court of Appeals for the Fourth Circuit modified the injunction. It continued injunctive protection against picketing and violence by the Respondents. However, it deleted the language italicized above on the grounds that this language was overbroad and infringed upon the exercise of First Amendment freedoms. The Court held:

> "In the Southern District cases, the record clearly supports the finding that picketing with the effect of closing the mines took place. There was also some evidence that sporadic acts of violence were perpetrated although the district judge made no finding as to this . . .
>
> In the 'and other manner' and the 'inducing' phrases, we think the order too broad. If the district judge was persuaded by the proffered evidence of the use of force and violence, it would have been proper for him to enjoin 'interference by force or violence' or 'inducing by force or violence, etc.' But without this qualification, the 'any other manner' category and the verb 'in-

ducing' would include pure expressions of opinion and thus infringe upon the exercise of First Amendment rights which did not seek to capitalize upon the asserted principle that no coal miner will cross any picket line irrespective of the object of picketing. The disabled miners and their dependents should not be restrained from publicizing their alleged grievances, short of picketing or employing force and violence to achieve their goals." (Petitioners' App. A. p. 12a, 13a).

REASONS WHY THE WRIT SHOULD NOT BE GRANTED

I. The decision of the Court of Appeals is harmonious with prior applicable decisions of this Court which have held that an injunction, particularly one which is issued on less than a full record and which endangers First Amendment freedoms, must be narrowly tailored to restrain no more than the actual unlawful conduct revealed in the record and described in the findings of fact.

A. *The findings of fact in this case fail to disclose any specific conduct, other than picketing, which was instrumental in or effective to accomplish a shutdown of the mines.*

The holding of the Court of Appeals in the instant case makes these facts clear:

1. The Court did not find, nor did it ratify, any finding by the District Court, that publicizing activities other than picketing were employed by the Respondents with the intention of bringing about the illegal object which the injunction was granted to protect against.

2. The Court did not find, nor did it ratify, any finding by the District Court that

publicizing activities, other than picketing, actually played a significant part in shutting down the mines.

Indeed, the Court could not have found otherwise. The Petitioners made no other contention. In both the District Court and the Court of Appeals they argued strenuously that a simple knee-jerk response to the presence of pickets, accompanied by violence, kept miners away from work. (Respondents' App. Pg. A-1, 2). Now, Petitioners advance a totally contradictory theory of the facts. They claim that the publicizing activities of Respondents played a part in causing the shutdown, and they ask this Court to approve of muzzling the Respondents in addition to shackling them.

This new theory is set out at page 6 of Petitioners' brief. Out of the more than two thousand pages of testimony they asked to have transcribed, and out of the hundreds they included in their Appendix, Petitioners cite to the testimony of only one witness to confirm this new found interpretation of the facts. When analyzed, that testimony reveals only that if there were no pickets, sometimes the miners at the witness' mine would not work. The witness then speculated that the men were afraid of violence if they worked. This is hardly a verification of plaintiffs' present contention that pure speech was utilized to effect a work stoppage or was operative in achieving it.

In sum, the Court of Appeals in the instant case, tailored an injunction to fit the facts it found, corresponding exactly to the theory of the facts advanced below by the Petitioners. In doing so, it followed unquestionably sound principles long established by this Court.

B. *The decision of the Court of Appeals to modify the injunction granted by the District Court is consistent with rulings of this Court which require that any restraint which may infringe upon protected areas of expression must be worded with the utmost precision and delicacy.*

This Court has repeatedly held that statutes, and particularly injunctions, tainted with the vice of overbreadth are constitutionally infirm. Thus, the Court of Appeals correctly applied precedent in limiting an overbroad and loosely worded injunction when rights of expression protected by the First Amendment were endangered. *United States* v. *Robel*, 389 U. S. 258, 262-3, 268 (1967); *Smith* v. *California*, 361 U. S. 147, 150-1 (1959); *Winters* v. *New York*, 333 U. S. 507, 509-10 (1948).

This principle was recently reasserted in *Carroll* v. *President and Commissioners of Princess Anne*, 393 U. S. 175, 183-4 (1968):

> "An order issued in the area of First Amendment rights must be couched in the narrowest terms that will accomplish the pin-pointed objective permitted by constitutional mandate and the essential needs of the public order. In this sensitive field, the State may not employ means that broadly stifle fundamental personal liberties when the end can be more narrowly achieved, *Shelton* v. *Tucker*, 364 U. S. 479, 488 (1960). In other words, the order must be tailored as precisely as possible to the exact needs of the case."

The principle set out in *Carroll* and the other cases cited for the same proposition are part and parcel of

this Court's consistently applied doctrine requiring that courts review in a restrictive light decisions involving prior restraint of expression. As stated in *Bantam Books, Inc.* v. *Sullivan*, 372 U. S. 58, 70 (1963):

> "Any system of prior restraints of expression comes to this Court bearing a heavy presumption against its constitutional validity."

Accord: *Carroll* v. *President and Commissioners of Princess Anne*, supra; *Near* v. *Minnesota*, 283 U. S. 697 (1931); *Organization for a Better Austin* v. *Keefe*, 402 U. S. 415, 418-420 (1971).

The holding of the Court of Appeals is also harmonious with holdings of this Court that courts have a duty to protect individuals from the chilling effect upon exercise of First Amendment freedoms generated by injunctions whose vague wording causes them to sweep within their scope overbroad classes of activities and individuals. *Walker* v. *City of Birmingham*, 388 U. S. 307 (1967); *Carroll*, supra, and *Robel*, supra, enunciate this classic protective principle that courts have an overriding duty to prevent the discouraging effect on free discussion wrought by injunctions which are so vaguely worded that parties cannot know what is proscribed and who is included within their proscriptions.

Had the Court of Appeals allowed the injunction of the District Court to stand as drafted, its decision would have been in flat derogation of this principle. The District Court's injunction extended to "picketing or in any other manner interfering" with the operation

of Petitioners' mines, and "coercing or otherwise inducing" miners not to work in Petitioners' mines. This admonition extended not only to named defendants and the Disabled Miners Association, but to "others acting in concert with it and/or them and/or for the achievement of the same objectives (i.e. liberalized benefits for disabled miners and widows from the UMWA Welfare and Retirement Fund) . . ." (Petitioners' App. C page 41a).

Certainly the combined effect of overbreadth of the description of the activities enjoined and the vagueness of definition of those against whom the injunction ran would have chilled, if not frozen, public discussion by large segments of West Virginia population of the issue of miners' and dependents' benefits.

C. *No case cited by the Petitioners is inconsistent with the decision of the Court of Appeals in this case.*

The petitioners cite *Schenck* v. *United States*, 249 U. S. 47 (1919); *Adderly* v. *Florida*, 385 U. S. 39 (1966); and *Konigsberg* v. *State Bar of California*, 366 U. S. 36 (1961) for the propositions that:

1. Speech is subject to reasonable regulation, to protect the rights of others, and

2. This Court does not hold an absolutist view of the First Amendment.

Neither of these propositions conflicts with the opinion of the Court of Appeals. Moreover, not one of these cases involves prior restraint of pure speech. Thus *Schenck*, *Adderly* and *Konigsberg* provide absolutely no guidance as to whether, under the particular cir-

cumstances of the case at issue, injunction of activities other than picketing is justified.

Neither does Petitioners' leading case, *Giboney* v. *Empire Storage & Ice Co.*, 336 U. S. 490 (1948). Petitioners cite *Giboney* for the broad proposition that where "publicizing" constitutes an essential part of a single and integrated course of conduct in violation of law, it may be enjoined. They then contend that *Giboney's* holding controls the instant case. This contention is incorrect for the following reasons:

First, the only "publicizing" which *Giboney* held enjoinable was picketing; not the use of opinion or belief remote from the scene of picketing. The opinion of the Missouri Supreme Court in the *Giboney* case made this clear. That court held:

> "The decree in this case forbidding picketing by defendants forbade only the picketing about plaintiff's premises. We affirm the decree . . ."

Empire Storage & Ice Co. v. *Giboney*, 210 S. W. 2d 55, 58 (Mo. 1948).

This Court definitively interpreted *Giboney's* scope in *Intl. Brotherhood of Teamsters, Local 695* v. *Vogt*, 354 U. S. 284 (1957), Mr. Justice Frankfurter summarized the decision in *Giboney* as follows:

> "A union, seeking to organize peddlers, picketed a wholesale dealer to induce it to refrain from selling to nonunion peddlers. The state courts, finding that such an agreement would constitute a conspiracy in restraint of trade in violation of the state antitrust laws, enjoined the picketing. This Court affirmed unanimously." *Id.*, at 291 (emphasis added).

In the same opinion, Mr. Justice Douglas, dissenting, expanded on Justice Frankfurter's description of the significance of *Giboney*:

> "Of course, we have always recognized that *picketing has aspects which make it more than speech. Bakery Drivers Local* v. *Wohl*, 315 U.S. 769, 776-777 (concurring opinion). That difference underlies our decision in *Giboney* v. *Empire Storage & Ice Co.*, 336 U.S. 490. There, *picketing* was an essential part of "a single and integrated course of conduct, which was in violation of Missouri's valid law." *Id.*, at 498. (emphasis added).
>
> * * *
>
> "I would return to the test enunciated in *Giboney —that this form of expression* can be regulated or prohibited only to the extent that it forms an essential part of a course of conduct which the State can regulate or prohibit." *Id.*, at 296-97. (emphasis added).

Second, even if *Giboney* did stand for the proposition that pure speech is enjoniable when it is an essential part of an integrated course of conduct, such a holding would have no application to the circumstances of the instant case. There is no finding by either court below in this case that any activities involving expression, except picketing, were essential to or even part of any integrated plan.

In fact, the decision in *Giboney* and the decision by the Court of Appeals below are similar. In each, the court found that picketing was being utilized to achieve what it considered to be an illegal object. In neither did the court find pure speech activity, carried on away from the site of the picketing to have been essential to

achievement of the proscribed object. In each, the court permitted an injunction to stand which extended to picketing or picketing plus placard carrying. Thus the decision of the Court of Appeals in this case is consistent with decision of this Court in *Giboney*.

The question presented by the Petitioners under Rule 23 of the Rules of the Supreme Court as the ground upon which writ of certiorari ought to be granted in this case was "Whether the Learned Court below decided a federal question in a way in conflict with prior applicable decisions of this Court below decided a federal question in a way in conflict with prior applicable decisions of this Court." In support of this position they cite *Douds* v. *Local 1250*, 170 F. 2d 700 (2d Cir. 1948), from which no appeal was taken to this Court. Assuming arguendo that there was a conflict between the decision of the Court of Appeals in *Douds* and the Court of Appeals in the case at bar, the Respondents submit such a conflict is not a "subsidiary question fairly comprised" in the question stated, and that this Court should therefore refuse to consider it consistent with the dictates of subsection (c) of Rule 23.

In any case the injunction issued in *Douds* enjoining pure speech activity is clearly unconstitutional under principles affirmed by this Court in every case cited by the Petitioners and Respondents. Regardless, the decision in *Douds* is plainly distinguishable from that reached in this case. Contrary to the findings herein, in *Douds* the court found that free speech activities other than picketing had been utilized to prevent employees from working. *Douds*, at 699.

Indeed had not the court in *Douds* made such a finding, upholding the injunction issued in that case would

have been in outright conflict with mandatory principles of construction established by this Court. As stated in *Labor Board* v. *Express Publishing Co.*, 312 U.S. 426, 436 (1941):

> "This Court will strike from an injunction decree restraints upon the commission of unlawful acts which are dissociated from those which a defendant has committed. *Swift & Co.* v. *United States*, 196 U.S. 375; *New York, N.H. & Hr. Co.* v. *United States* v. *Interstate Commerce Comm'n.*, 200 U.S. 361, 404, and see under the National Labor Relations Act, *National Labor Relations Board* v. *Swift & Co.*, 108 F. 2d 985.

Further, the injunction in *Douds* was drawn with far greater specificity than the all embracing one issued by the District Court in this case. On that ground alone, under the holdings of *Walker*, *Robel* and *Carroll* it is distinguishable from the case herein.

In sum, in their petition for a writ of certoirari, the Petitioners misinterpret the basis of the decision of the Court of Appeals remanding the case to the Southern District Court and requiring modification of the injunction issued in this case. Petitioners suggest that the Court of Appeals held that all forms of expression, except picketing or force, are, under all circumstances, immune from injunction under the First Amendment. Rather, the Court held that when injunctive relief is granted, particularly where such relief is preliminary, it must be tailored to restrain no more than what is reasonably required to accomplish its ends. In the context of the particular facts of this case, the Court found that short of picketing and employing violence, the respondents should not be restrained from expres-

sing their views, and that upon the record and findings herein, the injunction issued by the District Court prohibiting more than picketing and violence was overbroad and in addition, vague. *Schenck*, *Adderly*, *Konigsberg*, *Giboney* and *Douds* dictate no other course of action.

CONCLUSION

For the foregoing reasons the Petition for a Writ of Certiorari prayed for should be refused.

Respectfully submitted,

KENNETH J. YABLONSKI
505 Washington Trust Building
Washington, Pennsylvania 15301

Of Counsel

RICHARD M. BANK
12 Capitol Street
Charleston, West Virginia 25301

GAIL FALK
1026 Quarrier Street
Charleston, West Virginia 25301

APPENDIX

[33] * * *

II. The Orders of the Courts Below Did Not Violate the First Amendment Rights or Any Other Rights of the Disabled Miners, Widows et al. or Other Pickets.

The uncontradicted facts as proved by the evidence *and specifically found by Judge Christie* (267a) in these cases clearly establish that the picketing activity engaged in by the disabled miners, widows et al. was not a mere exercise of free speech.

The avowed purpose of the picketing was to "turn off the lights" of the entire country, and the means of achieving this end was by picketing coal mines, thereby halting production and the interstate movement of bituminous coal to electrical generating plants. (326a-327a; 333a; 354a-355a). The disabled miners, widows et al. were fully aware of the tradition among coal miners of not crossing picket lines at mines, and, relying upon this fact with the additional coercive threat of violence to effectuate their plan, the pickets were placed at or near the entrances to mines and were successful in closing down the mines. (260a; 265a-266a; AA, p. 12). Such activity as conducted by the disabled miners, widows et al. cannot be protected by the First Amendment because speech can never be viewed in the abstract, completely divorced from the surrounding circumstances. Therefore the activity of the pickets must be viewed in the context in which it occurred. As stated above, the pickets knew that their activity would stop the production of coal; in fact they relied upon this to achieve their goal of bringing pressure on the Trustees of the Fund. Thus it would be a gross

abuse of justice to allow them to take refuge in the First Amendment to protect them for their wilful, intentional and unlawful acts.

* * *

[35]

Furthermore, in these cases presently before the Court, the disabled miners, widows et al. were fully aware of the effect of picketing a mine. As discussed above, United Mine Workers will not cross a picket line, and the disabled miners, widows et al, relied upon this to effectuate their plan to stop the production of coal.

* * *